

(e) *Other disclosures.* Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

(f) *Sponsors of wrap fee programs.* (1) An investment adviser, registered or required to be registered pursuant to section 203 of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program, shall, in lieu of the written disclosure statement required by paragraph (a) of this section and in accordance with the other provisions of this section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV (§279.1 of this chapter). Any additional information included in such disclosure statement should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(2) If an investment adviser is required under this paragraph (f) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

(3) An investment adviser need not furnish the written disclosure statement required by paragraph (f)(1) of this section to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(4) An investment adviser that is required under this paragraph (f) to furnish a disclosure statement to clients of a wrap fee program shall furnish the

disclosure statement to each client of the wrap fee program (including clients that have previously been furnished the brochure required under paragraph (a) of this section) no later than October 1, 1994.

(g) *Definitions.* For the purpose of this rule:

(1) *Contract for impersonal advisory services* means any contract relating solely to the provision of investment advisory services (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (iii) any combination of the foregoing services.

(2) *Entering into*, in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of section 15(c) of that Act.

(4) *Wrap fee program* means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(Secs. 204, 206(4) and 211(a) (15 U.S.C. 80b-4 and 80b-11(a)))

[44 FR 7877, Feb. 7, 1979, as amended at 47 FR 22507, May 25, 1982; 59 FR 21661, Apr. 26, 1994]

§§ 275.204-4—275.204-5 [Reserved]

**§ 275.205-1 Definition of “investment performance” of an investment company and “investment record” of an appropriate index of securities prices.**

(a) *Investment performance* of an investment company for any period shall mean the sum of:

(1) The change in its net asset value per share during such period;

## Securities and Exchange Commission

## § 275.205-1

(2) The value of its cash distributions per share accumulated to the end of such period; and

(3) The value of capital gains taxes per share paid or payable on undistributed realized long-term capital gains accumulated to the end of such period; expressed as a percentage of its net asset value per share at the beginning of such period. For this purpose, the value of distributions per share of realized capital gains, of dividends per share paid from investment income and of capital gains taxes per share paid or payable on undistributed realized long-term capital gains shall be treated as reinvested in shares of the investment company at the net asset value per share in effect at the close of business on the record date for the payment of such distributions and dividends and

the date on which provision is made for such taxes, after giving effect to such distributions, dividends and taxes.

(b) *Investment record* of an appropriate index of securities prices for any period shall mean the sum of:

(1) The change in the level of the index during such period; and

(2) The value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period; expressed as a percentage of the index level at the beginning of such period. For this purpose cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the payment of the dividend.

### EXHIBIT I

[METHOD OF COMPUTING THE INVESTMENT RECORD OF THE STANDARD & POOR'S 500 STOCK COMPOSITE INDEX FOR CALENDAR 1971]

| Quarterly ending— | Index value <sup>1</sup> | Quarterly dividend yield-composite index |  |
|-------------------|--------------------------|--|--|
|                   |                          | Annual percent <sup>2</sup>              | Quarterly percent <sup>3</sup> (1/4 of annual) |
| Dec. 1970 .....   | 92.15                    | .....                                    | .....  |
| Mar. 1971 .....   | 100.31                   | 3.10                                     | 0.78   |
| June 1971 .....   | 99.70                    | 3.11                                     | .78  |
| Sept. 1971 .....  | 98.34                    | 3.14                                     | .79  |
| Dec. 1971 .....   | 102.09                   | 3.01                                     | .75  |

<sup>1</sup> Source: Standard & Poor's Trade and Securities Statistics, Jan. 1972, p. 33.

<sup>2</sup> *Id.* See Standard & Poor's Trade and Securities Statistics Security and Price Index Record—1970 Edition, p. 133 for explanation of quarterly dividend yield.

<sup>3</sup> Quarterly percentages have been rounded to two decimal places.

Change in index value for 1971: 102.09–92.15==9.94.      Accumulated value of dividends for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0078} \times \frac{\text{June}}{1.0079} \times \frac{\text{Sept.}}{1.0079} \times \frac{\text{Dec.}}{1.0075} - 1.00 = .0314$$

Aggregate value of dividends paid, assuming quarterly reinvestment and computed consistently with the index:

(Percent yield as computed above) × (ending index value) == Aggregate value of dividends paid

For 1971:

$$.0314 \times 102.09 = 3.21$$

Investment record of Standard & Poor's 500 stock composite index assuming quarterly reinvestment dividends:

$$\frac{9.94 + 3.21}{92.15} = 14.27 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the S & P dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the Standard & Poor's 500

**§ 275.205-1**

**17 CFR Ch. II (4-1-01 Edition)**

Stock Composite Index for the 12 months ended November 1971:

|                                 |       |
|---------------------------------|-------|
| Index value Nov. 30, 1971 ..... | 93.99 |
| Index value Nov. 30, 1970 ..... | 87.20 |
| Change in index value .....     | 6.79  |

| Quarter ending—  | Dividend yield |                         | Rate for each month of quarter ( $\frac{1}{12}$ of annual) |
|------------------|----------------|-------------------------|--|
|                  | Annual rate    | $\frac{1}{4}$ of annual |  |
| Dec. 1970 .....  | 3.41           | 0.85                    | 0.28   |
| Mar. 1971 .....  | 3.10           | .78                     | .26  |
| June 1971 .....  | 3.11           | .78                     | .26  |
| Sept. 1971 ..... | 3.14           | .79                     | .26  |
| Dec. 1971 .....  | 3.01           | .75                     | .25  |

Accumulated value of dividends reinvested:

December==1.0028  
January–March==1.0078  
April–June==1.0078  
July–September==1.0079  
October–November==1.0053<sup>4</sup>  
Dividend yield:

$$(1.0028 \times 1.0078 \times 1.0078 \times 1.0079 \times 1.0053) - 1.00 = .0320$$

Aggregate value of dividends paid computed consistently with the index:

$$.0320 \times 93.99 = 3.01$$

Investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 30, 1971:

$$\frac{6.79 + 3.01}{87.20} = 11.24 \text{ percent}$$

**EXHIBIT II**

[METHOD OF COMPUTING THE INVESTMENT RECORD OF THE NEW YORK STOCK EXCHANGE COMPOSITE INDEX FOR CALENDAR 1971]

| (1)—Quarter ending | (2)—Index value <sup>1</sup> | (3)—Aggregate market value of shares listed on the NYSE as of end of quarter (billions of dollars) <sup>2</sup> | (4)—Quarterly value of estimated cash payments of shares listed on the NYSE (millions of dollars) <sup>3</sup> | (5)—Estimated yield <sup>4</sup> (quarterly percent) |
|--------------------|------------------------------|---|--|--|
| Dec. 1970 .....    | 50.23                        | .....   | .....  | .....  |
| Mar. 1971 .....    | 55.44                        | \$709   | \$5,106  | 0.72   |
| June 1971 .....    | 55.09                        | 710   | 4,961  | .70  |
| Sept. 1971 .....   | 54.33                        | 709   | 5,006  | .71  |
| Dec. 1971 .....    | 56.43                        | 742   | 5,183  | .70  |

<sup>1</sup> Source: New York Stock Exchange Composite Index as reported daily by the New York Stock Exchange.

<sup>2</sup> Source: Monthly Review, New York Stock Exchange.

<sup>3</sup> Source: The Exchange, New York Stock Exchange magazine, May, Aug., Nov. 1971 and Feb. 1972 editions. Upon request the Statistics Division of the Research Department of the NYSE will make this figure available within 10 days of the end of each quarter.

<sup>4</sup> The ratio of column 4 to column 3.

Change in NYSE Composite Index value for 1971: 56.43 – 50.23 = 6.20.

Accumulated Value of Dividends of NYSE Composite Index for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0072} \times \frac{\text{June}}{1.0070} \times \frac{\text{Sept.}}{1.0071} \times \frac{\text{Dec.}}{1.0070} - 1.00 = 0.0286$$

Aggregate value of dividends paid on NYSE Composite Index assuming quarterly reinvestment:

For 1971:

$$.0286 \times 56.43 = 1.61$$

Investment record of the New York Stock Exchange Composite Index assuming quarterly reinvestment of dividends:

$$\frac{6.20 + 1.61}{50.23} = 15.55 \text{ percent}$$

<sup>4</sup>The rate for October and November would be two-thirds of the yield for the quarter ended Sept. 30 (i.e. .667 × .79 = .5269) since the

yield for the quarter ended Dec. 31 would not be available as of Nov. 30.

## Securities and Exchange Commission

## § 275.205-3

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the NYSE dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the NYSE Composite Index for the 12 months ended November 1971:

|                                 |       |
|---------------------------------|-------|
| Index value Nov. 30, 1971 ..... | 51.84 |
| Index value Nov. 30, 1970 ..... | 47.41 |
| Change in index value .....     | 4.43  |

| Quarter ending   | Dividend yield quarterly percent | Rate for each month of quarter (1/12 of annual) |
|------------------|----------------------------------|---|
| Dec. 1970 .....  | 0.79                             | 0.26  |
| Mar. 1971 .....  | .72                              | .24   |
| June 1971 .....  | .70                              | .23   |
| Sept. 1971 ..... | .71                              | .24   |
| Dec. 1971 .....  | .70                              | .23   |

Accumulated value of dividends reinvested:  
 December ==1.0026  
 January-March ==1.0072  
 April-June ==1.0070  
 July-September ==1.0071  
 October-November ==1.0047<sup>4</sup>  
 Dividend yield:

$(1.0026 \times 1.0072 \times 1.0070 \times 1.0071 \times 1.0047) - 1.00 = .0289$

Aggregate value of dividends paid computed consistently with the index:

$.0289 \times 51.84 = 1.50$

Investment record of the NYSE Composite Index for the 12 months ended November 30, 1971:

$$\frac{4.43 + 1.50}{47.41} = 12.51 \text{ percent}$$

(Secs. 205, 211, 54 Stat. 852, 74 Stat. 887, 15 U.S.C. 80b-205, 80b-211; sec. 25, 84 Stat. 1432, 1433, Pub. L. 91-547)

[37 FR 17468, Aug. 29, 1972]

### § 275.205-2 Definition of "specified period" over which the asset value of the company or fund under management is averaged.

(a) For purposes of this rule:

<sup>4</sup> The rate for October and November would be two thirds of the yield for the quarter ended September 30 (i.e.  $.667 \times .71 = .4736$ ), since the yield for the quarter ended December 31 would not be available as of November 30.

(1) *Fulcrum fee* shall mean the fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

(2) *Rolling period* shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

(b) The specified period over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices or such other measure of investment performance are computed.

(c) Notwithstanding paragraph (b) of this section, the specified period over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if:

(1) The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each subperiod of the rolling period; and

(2) The fulcrum fee is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the rolling period.

(Secs. 205, 106A, 211; 54 Stat. 852, 855; 84 Stat. 1433, 15 U.S.C. 80b-5, 80b-6a, 80b-11)

[37 FR 24896, Nov. 22, 1972]

### § 275.205-3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b-5(a)(1)) will not be deemed to prohibit an investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided*, That the client entering into the contract subject to this section is a